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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 STATE BANK OF TEXAS,
12 Plaintiff,
13 v.
14 SAM PARABIA, *ET AL.*,
15 Defendants.

Case No.: 14-cv-3031-L-DHB

**ORDER GRANTING MOTION FOR
SANCTIONS; BRIEFING
SCHEDULE**

[Doc No. 334]

16
17 Pending before the Court in this judicial foreclosure action is Motion for Sanctions
18 Against Stephen F. Lopez, Esq. under 28 U.S.C. § 1927 filed by Plaintiff State Bank of
19 Texas (the “Bank”). (Doc. no. 334.) Lopez, the counsel for Defendants Sam and Perin
20 Parabia (together the “Parabias”), filed an opposition. (Doc. no. 335.) The Bank filed a
21 reply. (Doc. no. 336.) Pursuant to Civil Local Rule 7.1(d)(1), this motion is decided on
22 the briefs without oral argument. For the reasons stated below, the motion is granted.
23 The Court reserves the issue of attorneys’ fees for decision upon further briefing.

24 **I. BACKGROUND**

25 The Parabias purchased a luxury residence located at 7213 Romero Drive in La
26 Jolla, California, valued at over \$ 4 million (the “Property”). (*See In re Sam F. Parabia,*

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1 19-bk-02166 (S.D. Cal.) (“Sam Parabia’s Bankruptcy”), doc. no. 10-1 at 2¹ (valued at
 2 \$4.3 mil.); *see also In re Perin Parabia*, 18-bk-02058 (S.D. Cal.) (“Perin Parabia’s
 3 Bankruptcy”) doc. nos. 14 at 4, 79 at 1 & Ex. A (valued at \$6.3 mil.); doc. no. 311 herein
 4 at 1.) The Parabias signed a promissory note secured by a deed of trust on the Property.
 5 Ultimately, the Bank acquired the Parabias’ secured debt. Because the Parabias were in
 6 default, the Bank filed this action seeking judicial foreclosure.

7 In early 2015, the parties entered into a Settlement Agreement and Mutual Release
 8 effective April 9, 2015 (doc. no. 27-1 (“Settlement”)) requiring the Parabias to pay the
 9 Bank \$1.3 million by making a \$25,000 payment by March 27, 2015, and a second
 10 payment for the balance by June 27, 2015. (*Id.* at 2-3.) The Settlement provided it “shall
 11 be secured by a Stipulation for Entry of Judgment for Judicial Foreclosure ([doc. no.
 12 27]‘Stipulation’) against [the Parabias].” (*Id.* at 3.) If the Parabias made a timely second
 13 payment, the Bank would file a request for dismissal with prejudice; if they did not, the
 14 Bank could file the Stipulation with the Court and record the resulting judgment without
 15 notice to the Parabias. (*Id.*)

16 The Parabias defaulted. Accordingly, on July 7, 2015, the Bank filed the
 17 Stipulation together with the Settlement, and requested entry of judgment. The
 18 Stipulation was signed by the Parabias and their counsel. The Court approved it and
 19 entered the Order Granting Joint Motion for Judgment of Foreclosure and Order of Sale.
 20 (Doc. no. 28.) A writ of sale and notice of sale were served on the Parabias. (Docs. no.
 21 37, 38, 41-44, 46.)

22 On March 1, 2016, a third-party creditor filed a Judgment Lienholder’s Objection
 23 to U.S. Marshal’s Sale, claiming to hold a lien on the Property. (Doc. no. 48.) The Bank
 24 responded indicating it had identified additional lienholders and would move to vacate
 25 the judgment and request leave to amend to add the newly-discovered lienholders as
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 28 ¹ The page numbers were electronically assigned to the filing.

1 defendants. (Doc. no. 51.) The Bank's response was served on the Parabias. (*Id.* at 5.)
2 Shortly thereafter, the Bank filed its motion to vacate the judgment and requested leave to
3 amend. It served the motion on the Parabias, the Parabias did not respond, and the Court
4 granted the Bank's motion. (Docs. no. 53, 54.) On May 2, 2016, the Bank served the
5 second amended complaint on the Parabias. (*See* doc. no. 56-15.)

6 Only one of the new lienholder defendants responded to the second amended
7 complaint. The Parabias did not respond. Defaults were entered against all non-
8 responding defendants. The Bank moved for a default judgment against them and for
9 summary judgment against the lienholder who responded. None of the non-responding
10 defendants opposed entry of default judgment. (*See* doc. no. 84 at 1.) On September 15,
11 2017, the Court issued Order (1) Granting Plaintiff's Motion for Summary Adjudication
12 and (2) Granting Plaintiff's Motion for Default Judgment ("Judicial Foreclosure Order"),
13 which provided for foreclosure of the Property by way of a sale conducted by the United
14 States Marshal and set out the amounts owed by the Parabias. (Doc. no. 84 at 8-10.)
15 Judgment was entered accordingly. (Doc. no. 86.) Writs of sale and execution were
16 issued shortly thereafter. On November 2, 2017, the U.S. Marshal served the writs on the
17 Parabias. (Doc. nos. 98-107, 155, 156.)

18 On November 13, 2017, Perin Parabia filed an Objection to U.S. Marshal's Sale.
19 (Doc. no. 159 ("Objection").) She sought to set aside the Judicial Foreclosure Order and
20 the default judgment contending she was unaware of this case and the default judgment,
21 and that either her brother (Defendant Sam Parabia) or counsel forged her signature on
22 the Stipulation. She did not contend that her signature on the Settlement was forged. For
23 the reasons stated in the order, including the fact that Perin Parabia's claims were
24 contradicted by the record, her Objection was overruled. (Doc. no. 164.)

25 On March 5, 2018, the U.S. Marshal served the Parabias with the notice of sale.
26 (Doc. nos. 167, 169, 172-77.) On the day before the sale, April 5, 2018, Perin Parabia
27 filed a Chapter 11 bankruptcy petition. (*See* Perin Parabia's Bankruptcy, doc. no. 1.) On
28 September 7, 2018, she stipulated to dismissal. (*Id.* doc. no. 60.)

1 Immediately after the dismissal, the Bank again requested a writ of execution from
 2 this Court and noticed the sale of the Property. (Doc. nos. 203-05.) Again, the U.S.
 3 Marshal served the Parabias with the notice of sale. (Doc. nos. 206-08, 234, 238, 240,
 4 242.)

5 On April 17, 2019, the morning of the noticed sale, Sam Parabia filed a Chapter 7
 6 bankruptcy petition. (Sam Parabia’s Bankruptcy, doc. no. 1.) The Bank filed a motion
 7 for relief from stay, which Sam Parabia did not oppose. (*Id.* doc. nos. 59, 72.) On
 8 August 20, 2019, the Hon. Laura D. Taylor granted the motion finding that “the Debtor’s
 9 filing of the Petition was a part of a scheme to delay, hinder, or defraud creditors that
 10 involved [¶] multiple bankruptcy filings affecting the Romero Drive Property.” (*Id.* doc.
 11 no. 76 at 3.)

12 On the day when Sam Parabia filed his bankruptcy case, Perin Parabia filed a
 13 complaint in the San Diego County Superior Court alleging claims for negligent
 14 misrepresentation, violation of California Business & Professions Code § 17200 *et seq.*,
 15 and breach of the implied covenant of good faith and fair dealing against the Bank and its
 16 CEO Chan Patel. (*Dr. Perin Parabia v. State Bank of Texas et al.*, 37-2019-00019786
 17 (Cal. Super. Ct.)) The Bank removed the action to this District. (19cv00725 (“Perin
 18 Parabia’s Removed Action”) doc. no. 1.) In her verified complaint, Perin Parabia averred
 19 that she “entered into a settlement agreement [with the Bank] dated April 9, 2015,
 20 acknowledging certain [of her] defaults . . . and requiring entry . . . into a Stipulation for
 21 Judgment of Foreclosure and Order of Sale.”² (*Id.* doc. no. 1-2 at 10.) Further, she
 22 averred that in January 2016 Sam Parabia traveled to India where he sold 81 acres of
 23 mango farm, met with the Bank’s CEO, and paid off the Parabias’ debt to the Bank. (*Id.*
 24 at 11.) She requested damages and an order enjoining foreclosure of the Property. (*Id.* at
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 27 ² This is the same stipulation she had relied upon in her Objection to the foreclosure
 28 sale arguing her signature had been forged. (*Cf.* doc. no. 27 (Stipulation); doc no. 27-1
 (Settlement); doc. no. 159 at 9.)

12, 18.) The Bank moved to dismiss. (*Id.* doc. no. 6-1.) Perin Parabia did not oppose the motion. (*See id.* doc. nos. 10, 14.) On August 3, 2020, the Hon. Roger T. Benitez granted the Bank's motion and dismissed the case based on the res judicata effect of the default judgment entered in this action. (*Id.* doc. no. 14.)

When the stay in Sam Parabia's bankruptcy was lifted, the Bank again requested a writ of execution. In September 2019, the U.S. Marshal again served the Parabias with the notice of sale. (Doc. nos. 249, 250, 252, 256-60.) The sale was noticed for October 9, 2019. (*See* docs. no. 296-3 at 2, 296-4.)

Having recently retained Lopez, on October 4, 2019, the Parabias filed a Motion to Set Aside Default and Default Judgment. (Doc. no. 284 ("Mot. to Set Aside Default").) The motion sought to set aside the Judicial Foreclosure Order -- the same relief Perin Parabia had sought in her Objection, and the Court denied, in November 2017. (*See* docs. no. 159, 164.) In a further attempt to forestall the foreclosure sale, on October 7, 2019, the Parabias filed an Emergency Ex parte Application for Temporary Restraining Order. (Doc. no. 285 ("the Parabias' TRO").) Both motions were denied on October 8, 2019. The Motion to Set Aside Default was denied because the Parabias failed to carry the burden on their arguments that the default judgment was obtained through fraud, and that the judgment had been satisfied, released or discharged pursuant to the agreement between Sam Parabia and Chan Patel in India. (Doc. no. 290 at 3-4.) The Parabias' TRO was denied because they failed to show they were likely to succeed on the merits or that issuing a temporary restraining order would benefit the public interest. (*Id.* at 4-5.)

Immediately after the judicial foreclosure sale, which took place on October 9, 2019 (doc. no. 297), the Bank's counsel informed Lopez that the Bank was the successful bidder and requested to inspect the Property while the Parabias remained in possession during their 90-day right of redemption. (Doc. no. 334-3 at 1 & Exs. 1 & 2.) Lopez responded "I doubt my clients will cooperate at all. I am pretty sure you will need to bring an unlawful detainer." (*Id.* Ex. 1.) Apparently unaware that the Parabias' TRO and Motion to Set Aside Default had been denied, he added, "Note my clients will go forward

1 with their motion regardless most likely [*sic*].” (*Id.*) The Bank’s counsel contacted
 2 Lopez twice more to inform him that the Parabias’ motions had been denied and to meet
 3 and confer on the issue of inspection, however, he received no response. (*See* doc. no.
 4 294-2 at 1-2 and Ex. B.)

5 Having received no response, on October 11, 2019, the Bank filed an ex parte
 6 application seeking emergency relief to permit entry on the Property, restrain waste, and
 7 appoint a receiver to collect rents. (Doc. no. 291, 294 (“the Bank’s TRO”).) The
 8 Parabias opposed, arguing that the Bank was not entitled to relief because it had not filed,
 9 and prevailed on, an unlawful detainer action. (Doc. no. 292.) Rejecting this argument,
 10 and noting that “[t]he record illustrates that the Parabias took several deliberate actions to
 11 delay and/or prevent the foreclosure sale from going forward,” the Court granted the
 12 Bank’s TRO. (Doc. no. 295 (“Oct. 16 Order” or “Order”).) With Lopez’s assistance, the
 13 Parabias have flouted the Order in every possible way.

14 **II. DISCUSSION**

15 The Bank moves for sanctions against Lopez in the amount of \$23,872.50 “or such
 16 other amount that will fairly compensate [the Bank]” pursuant to 28 U.S.C. § 1927 for the
 17 expenses incurred since October 16, 2019 due to Lopez’s unreasonable and vexatious
 18 multiplication of proceedings with full knowledge of his clients’ history of frivolous and
 19 fraudulent filings. (Doc. no. 334 at 1; doc. no. 334-1 at 2, 12.)

20 Title 28 U.S.C. § 1927 provides in pertinent part,

21 Any attorney . . . who so multiplies the proceedings in any case
 22 unreasonably and vexatiously may be required by the court to satisfy
 23 personally the excess costs, expenses, and attorneys' fees reasonably
 24 incurred because of such conduct.

25 Lopez opposes the Bank’s motion arguing that his filings were supported by law
 26 and facts as he knew them, he lacked the requisite bad faith, and the Bank failed to show

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1 that its attorneys' fees costs, and expenses were reasonable or caused by Lopez's
2 sanctionable conduct. (Docs. no. 335, 335-1.³)

3 **A. Multiplication of Proceedings**

4 The Court first turns to the issue whether Lopez multiplied the proceedings in this
5 action. Because the Bank requests attorneys' fees incurred after October 16, 2019, the
6 Court focuses on proceedings since that date.

7 The October 16, 2019 Order granted the Bank's TRO and appointed a receiver for
8 the Property, ordered production of the property insurance policy, allowed the Bank to
9 enter the Property for purposes of inspection, and ordered the Parabias to pay rent while
10 they remained in possession during their post-foreclosure redemption period. The Court
11 rejected Lopez's argument that the Bank was not entitled to relief unless it had filed and
12 prevailed in an unlawful detainer action. (*See* docs. no. 292, 295.) Since then, Lopez has
13 unsuccessfully reasserted the unlawful detainer argument in three more filings (docs. no.
14 298, 310, 319), and filed a number of meritless briefs to interfere with the Bank's rights
15 after foreclosure and facilitate the Parabias' strategy of delay in order to remain in
16 possession of the Property rent-free.

17 The October 16 Order required the Parabias to produce the property insurance
18 policy to the Bank's receiver. (Order at 10.) The Parabias did not oppose this provision.
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21 ³ The Bank objected to the admissibility of Lopez's declaration (doc. no. 335-1)
22 based on failure to substantially comply with 28 U.S.C. § 1746(2). (*See* doc. no. 336 at
23 5.) Lopez made his declaration based on personal knowledge and stated it was "true and
24 correct . . . under the laws of the State of California," but did not state that he made the
25 declaration "under penalty of perjury." (*See* doc. no. 335-1 at 1, 7.) Accordingly, he did
26 not comply with Section 1746. *See Commodity Futures Trading Comm'n v. Topworth*
27 *Int'l, Ltd.*, 205 F.3d 1107, 1112 (9th Cir. 1999) (finding substantial compliance because
28 the declaration stated it was "true and correct under penalty of perjury"); *Schroeder v.*
McDonald, 55 F.3d 454, 460 n.10 (9th Cir. 1995) (same). Although the Court finds the
declaration inadmissible, it is considered in this order as an offer of proof.

1 (See docs. no. 292, 298, 299.) Nevertheless, they refused to comply until after the Bank
2 had filed an ex parte application to enforce the Order.

3 The Bank filed its application after a month-long attempt to informally resolve the
4 issue, having made four requests on Lopez, and the receiver having directly requested a
5 copy of the policy from the Parabias. (See doc. nos. 302-1 through 3.) On October 21,
6 2019, Lopez represented to the Bank's counsel that he had asked the Parabias to provide
7 the policy. (Doc. no. 302-2 at 3-4; see also doc. no. 302-1 at 2.) When the receiver asked
8 for the policy at the October 25, 2019 Property inspection, Perin Parabia told him he
9 should ask Lopez. (Doc. no. 302-3 at 2.) Only after the ex parte application was filed,
10 did Lopez provide the insurance policy to the Bank. (See doc. no. 304.)

11 Because Lopez eventually provided the insurance policy to the Bank, its ex parte
12 application was denied as moot. (Doc. no. 306.) Nevertheless, his failure to comply with
13 the Order in due course multiplied the proceedings by requiring the Bank to file the ex
14 parte application (doc. no. 302).

15 Next, the October 16 Order required the Parabias to pay rent while they remained
16 in possession during their 90-day redemption period. (Order at 3, 5.) On October 25,
17 2019, the receiver informed Perin Parabia that the Court had ordered her and her brother
18 to pay rent. (Doc. no. 301.) She replied that Lopez had instructed them they were not
19 required to pay. (*Id.*) Despite the Court's orders, the Parabias did not pay any rent. (See
20 doc. nos. 313-3 at 2, 313-10 at 1.)

21 The Parabias were provided an opportunity to show cause why the Order should
22 not stay in effect during the entire 90-day right of redemption. (Order at 11-12.)
23 Although the Court had already rejected the unlawful detainer argument, Lopez asserted
24 it again in response to the order to show cause. (Doc. no. 298.) This necessitated the
25 Bank to respond. (See docs. no. 299, 300, 301.) The Court explicitly rejected the

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1 argument. (*See* doc. no. 307.)⁴ Nevertheless, Lopez raised the argument for the third
 2 time in opposition to the Bank's motion to set the rent amount (doc. no. 309),
 3 necessitating the Bank to respond yet again (doc. no. 310). The unlawful detainer
 4 argument was rejected as before. (Doc. no. 311 at 2.)

5 The October 16 Order was to remain in place for the duration of the redemption
 6 period, and the Parabias were ordered to pay \$20,000 in rent per month. (Docs. no 307,
 7 311.) When the redemption period expired, the Parabias had not paid any rent. On
 8 January 22 and 27, 2020, the Bank's counsel attempted to meet and confer with Lopez to
 9 arrange for payment of rent and vacating the Property, however, Lopez did not respond to
 10 either of these attempts. (Doc. nos. 313-3 at 1-2, 313-10.) As of January 29, 2020, the
 11 Parabias still had not paid any rent. Accordingly, the Bank filed a motion for a Writ of
 12 Execution to collect past-due rent. (Docs. no. 313, 315, 315-1.) The Parabias did not
 13 oppose, and the writ issued accordingly. (Doc. no. 317.)

14 Lopez's repeated assertion of the baseless unlawful detainer argument enabled the
 15 Parabias to flout the Order by occupying the Property rent-free, led to the multiplication
 16 of proceedings by requiring the Bank to repeatedly brief the issue (docs. no. 300, 301,
 17 310) and ultimately request a writ of execution (docs. no. 313, 315).

18 Having been the successful bidder at the judicial foreclosure sale, on October 22,
 19 2019, the Bank filed a Motion for an Order for the Distribution of the Proceeds from the
 20 Sale of the Subject Property. (Doc. no. 296 ("Motion for Distribution of Proceeds").)
 21 The Bank had paid the U.S. Marshal to cover the fees of the sale and the estimated
 22 judgment amount as provided in the Judicial Foreclosure Order.⁵ (*See* doc. no. 296-2.)
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 25 ⁴ The ruling was affirmed on appeal. (*Cf. State Bank of Texas v. Sam Parabia et al.*,
 26 20-55154 (9th Cir.) ("Parabias' Appeal") doc. no. 35-1 at 3; *with* doc. no. 307 herein
 27 (both decisions citing Cal. Code Civ. Proc. § 729.090(a)).

28 ⁵ The Judicial Foreclosure Order provided for a foreclosure sale of the Property
 conducted by the U.S. Marshal Service, listed the amounts the Parabias owed the Bank,

1 The Parabias opposed. (Doc. no. 303.) They did not dispute the amount they
 2 owed the Bank, they did not dispute the amount of attorneys' fees, costs or interest as
 3 calculated by the Bank, they did not dispute the amount the Bank paid at the foreclosure
 4 sale for the Property, and they did not contend that the Court should distribute any
 5 portion of the proceeds to them. (*See* doc. no. 312 at 2.) The Bank was not asking for a
 6 deficiency judgment against the Parabias and took the Property subject to senior liens.
 7 (*See id.*) Still, the Parabias opposed the distribution of proceeds to the Bank claiming
 8 that the Bank "wishes to have its cake and eat it too." (Doc. no. 303 at 2.) Lopez argued
 9 that to obtain a distribution, the Bank "had to have paid something for the property at the
 10 sale," and, incongruently, that the Bank was not allowed to make a cash bid but should
 11 have made a credit bid. (*Id.* at 2-3.) Because the Bank's bid and request for
 12 disbursement complied with the law and the Judicial Foreclosure Order, the argument
 13 was rejected. (Doc. no. 312.)⁶ Lopez multiplied the proceedings when he filed the
 14 wholly meritless opposition to the Bank's Motion for Distribution of Proceeds, requiring
 15 the Bank to respond (doc. no. 305).

16 After the deed of sale was recorded (*see* doc. no. 313-4) and the 90-day redemption
 17 period expired, the Parabias refused to vacate the Property. The Bank counsel twice
 18 contacted Lopez to inquire whether the Parabias would be willing to voluntarily vacate;
 19 however, he received no response. (Doc. no. 329-3 at 2-3.) On January 29, 2020, the
 20 receiver spoke to Perin Parabia on the phone. (Doc. no. 313-2 at 2.) She told him that
 21 her brother and herself were still the owners of the Property and are still occupying it.

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 24 set the total of these amounts as the minimum sale price for the Property, and directed
 25 that the proceeds of the sale be deposited with the Court. (Judicial Foreclosure Order at
 26 9-10.) Any surplus over the minimum sale amount was to be distributed according to
 27 California law, and the Court retained jurisdiction to determine any deficiency against the
 28 Parabias. (*Id.* at 10-11.)

⁶ The ruling was affirmed on appeal. (*Cf.* Parabias' Appeal doc. no. 35-1 at 2; *with* doc. no. 312 herein (both decisions citing Cal. Code Civ. Proc. § 701.590(b)).

1 (*Id.*) As before, she directed him to Lopez “for more information.” (*Id.*) Having
 2 received no response from Lopez, the Bank filed a Motion for a Writ of Possession.
 3 (Doc. no. 313, 314.) The Parabias did not oppose, and the writ was issued accordingly.
 4 (Doc. no. 316.)

5 On February 10, 2020, the Parabias filed a Motion to Quash Writ of Possession
 6 (“Motion to Quash”) challenging the validity of the sale. (Doc. no. 319.) For the fourth
 7 time Lopez argued that the Bank must bring an unlawful detainer action to obtain
 8 possession of the Property from the Parabias. (*Id.* at 3-7.) On February 20, 2020, the
 9 Bank’s counsel requested Lopez to withdraw his baseless motion. (Doc. no. 334-11 at 2;
 10 doc. no. 334-12 at 2.) Lopez did not withdraw the motion but requested hearing on
 11 shortened time. (Doc. no. 325.) The Bank filed an opposition to the motion and
 12 application for shortened time. (Docs no. 326, 329.) The Motion to Quash was denied as
 13 lacking any merit.⁷ (Doc. no. 331.) Lopez multiplied the proceedings by necessitating
 14 the Bank to file a request for a writ of possession before the Parabias vacated the Property
 15 and oppose their baseless Motion to Quash (docs. no. 313, 314, 326, 329).

16 Based on the foregoing, the Court finds that Lopez multiplied the proceedings in
 17 this action after October 16, 2019. Lopez does not deny that he took the actions that
 18 multiplied the proceedings.

19 **B. Unreasonably and Vexatiously**

20 “[A]n award of sanctions under 28 U.S.C. § 1927 . . . requires a finding of
 21 recklessness or bad faith.” *Fink v. Gomez*, 239 F.3d 989, 993 (9th Cir. 2001); *see also*
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 25 ⁷ The Parabias filed an emergency petition for a writ of mandamus to appeal the
 26 ruling. (Doc. no. 332; (*State Bank of Texas v. Sam Parabia et al.*, 20-70838 (9th Cir.).)
 27 The Court of Appeals dismissed the petition on procedural grounds. (*See* doc. no. 338
 28 herein.)

1 *B.K.B. v. Maui Police Dept.*, 276 F.3d 1091, 1107 (9th Cir. 2002).⁸ “[S]ubjective bad
 2 faith . . . is present when an attorney knowingly or recklessly raises a frivolous argument,
 3 or argues a meritorious claim for the purpose of harassing an opponent.” *B.K.B.*, 276
 4 F.3d at 1107 (emphasis omitted) (quoting *In re Keegan Mgt. Co. Sec. Litig.*, 78 F.3d 431,
 5 436 (9th Cir. 1996)). “Without more, reckless, but nonfrivolous, filings may not be
 6 sanctioned.” *Stone Creek, Inc. v. Omnia Italian Design, Inc.*, 875 F.3d 426, 442 (9th Cir.
 7 2017). On the other hand, “[s]anctions are permissible when an attorney has acted
 8 recklessly if there is something more—such as an improper purpose.” *Fink*, 239 F.3d at
 9 993.

10 Based on the record summarized in Section II.A. above, the Court finds that
 11 Lopez’s actions were undertaken in bad faith. His numerous filings were consistently
 12 based on patently meritless and frivolous arguments. Furthermore, Lopez stonewalled
 13 even the most basic meet-and-confer efforts to comply with the law and this Court’s
 14 orders such as to produce the insurance policy, make arrangements to pay rent, and
 15 vacate the Property upon expiration of the 90-day redemption period. The Court further
 16 finds that Lopez acted for the improper purpose of delay and interference with the Bank’s
 17 rights after foreclosure.

18 In his opposition, Lopez protests he did nothing wrong. (Doc. no. 335 at 4, 6.) He
 19 is an experienced foreclosure and unlawful detainer attorney, and contends he merely
 20 wanted to force the Bank to comply with California law. (*Id.* at 3, 4, 6; *see also* doc. no.
 21 335-1 at 2-6.) To the contrary, the record shows that, independently of Lopez’s actions,
 22 the Bank followed the law and the orders of this Court.

23 Lopez argues it was the Bank’s own fault that it racked up its fees, claiming there
 24 is no “evidence . . . that [he] took affirmative action that made the motions filed by [the
 25 Bank] necessary,” and that the Bank “brought several motions at their [*sic*] own
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 28 ⁸ Unless otherwise noted, internal quotation marks, brackets, ellipses, citations, and
 footnotes are omitted.

1 discretion.” (Doc. no. 335 at 2-4, 6; doc. no. 335-1 at 4-5.) As discussed above,
2 Lopez’s refusal to engage in meet-and-confer efforts on even the most basic matters of
3 the Parabias’ compliance with the law and orders of this Court required the Bank to file
4 its ex parte application for production of the property insurance policy and motions for
5 writs of possession and execution (docs. no. 302, 313, 314, 315.)

6 Lopez also blames his predecessor. He claims the Judicial Foreclosure Order was
7 the result of the prior counsel “dropping the ball.” (Doc. no. 335-1 at 2.) The time to
8 appeal the resulting judgment and writ of sale “had run long before [he] became
9 involved. As a result, [he] could only make sure that [the Bank] held the sale in
10 compliance with California law in regard to the sale, protect the Parabias [from being
11 removed from the Property], and point out the Court that the Parabias claimed that they
12 had settled with [Bank’s] President.” (*Id.* at 2.)

13 None of these contentions are availing. The Bank’s pending motion concerns only
14 litigation since October 16, 2019, after the sale had already taken place; accordingly,
15 none of Lopez’s actions at issue affected the sale. The contention that the Parabias had
16 settled by way of Sam Parabia’s agreement with Chan Patel in India, and thus allegedly
17 satisfied the judgment before the sale, was rejected as unsupported in the October 16,
18 2019 Order. None of Lopez’s actions thereafter were based on the purported settlement
19 in India. Finally, as the record demonstrates, and Lopez acknowledges, his actions
20 furthered the Parabias’ strategy of delay in order to continue occupying the Property rent-
21 free.

22 Finally, Lopez blames his clients. He contends that when he was retained in
23 September 2019, he was unable to review the files of the Parabias’ prior counsel, and
24 “mostly learned of the facts of the case by reviewing available court records.” (Doc. no.
25 335-1 at 2.) The declarations Lopez filed on behalf of the Parabias in support of their
26 Motion to Set Aside Default show he was aware of Sam Parabia’s bankruptcy and Perin
27 Parabia’s Removed Action. (*See* docs. no. 284-2, 284-3.) In their respective
28 declarations, the Parabias admitted that Sam Parabia’s Bankruptcy and Perin Parabia’s

1 Removed Action were filed to forestall foreclosure. (Doc. no. 284-3 at 2; doc. no. 284-2
2 at 2.)

3 In consulting court records of those proceedings, Lopez must have learned that
4 after commencing each proceeding, the Parabias did not actively pursue relief, suggesting
5 the proceedings had been filed for the improper purpose of delay. The records in Sam
6 Parabia's Bankruptcy contain the Bankruptcy Court's finding on August 20, 2019, that
7 "the Debtor's filing of the Petition was a part of a scheme to delay, hinder, or defraud
8 creditors that involved [¶] multiple bankruptcy filings affecting the Romero Drive
9 Property." (*Id.* doc. no. 76 at 3.) Finally, Lopez must have been aware of this Court's
10 October 16, 2019 finding that "[s]ince Default Judgment was issued, the record illustrates
11 that the Parabias took several deliberate actions to delay and/or prevent the foreclosure
12 sale from going forward." (Order at 2.) Lopez's protestation of ignorance based on the
13 limited information he received from his clients are rejected.

14 Lopez also contends he could not "make his clients agree to something they do not
15 want to." (Doc. no. 335 at 6.) While the Court assumes, *arguendo*, that this is true,
16 Lopez could have refused to file frivolous briefs and engage in stonewalling of
17 reasonable meet-and-confer efforts. The Civil Local Rules of this District and the Rules
18 of Professional Conduct of the State Bar of California suggest that he should have. *See*
19 R. of Prof. Conduct 3.2; Civ. Loc. Rule 2.1(a)(2)(f)-(h).

20 Based on the foregoing, the Court finds that Lopez unreasonably and vexatiously
21 multiplied proceedings in this action by advancing frivolous arguments and stonewalling
22 reasonable efforts to meet and confer for the improper purpose of delay and interference
23 with the Bank's rights after foreclosure.

24 **3. Attorneys' Fees**

25 When an attorney unreasonably and vexatiously multiplies proceedings, section
26 1927 provides for recovery from the attorney personally of "excess costs, expenses, and
27 attorneys' fees reasonably incurred because of such conduct." 28 U.S.C. § 1927. The

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1 Bank requests an award of \$23,872.50 in attorneys' fees "or such other amount that will
2 fairly compensate" it for Lopez's sanctionable conduct. (Doc. no. 334-1 at 15.)

3 Based on the record discussed above, the Court finds that Lopez's sanctionable
4 conduct caused the Bank to incur attorneys' fees, costs, and expenses for the following:

5 1. repeated informal efforts to obtain a copy of the property insurance
6 policy and the filing of related ex parte application (doc. no. 302);⁹

7 2. briefing the Parabias' arguments relative to their obligation to pay rent
8 and the appropriate rent amount, any informal efforts to obtain payment of rent, and
9 motion for a writ of execution (docs. no 300, 301, 310, 313, 315);

10 3. responding to the Parabias' opposition to the Bank's Motion for
11 Distribution of Proceeds (doc. no. 305); and

12 4. informal efforts to obtain possession of the Property, motion for a writ
13 of possession, and opposition to the Parabias' Motion to Quash (docs. no. 314, 326, 329).

14 The amount of sanctions must be reasonable. *See* 28 U.S.C. § 1927. Reasonable
15 attorneys' fees are determined by following the lodestar approach. *Mirch v. Frank*, 266
16 Fed. Appx. 586, 588 (9th Cir. 2008) (citing *Intel Corp. v. Terabyte Int'l*, 6 F.3d 614, 622
17 (9th Cir. 1993)). Under this approach, the court calculates the presumptively-reasonable
18 lodestar figure by multiplying the hours reasonably spent in countering sanctionable
19 conduct by a reasonable hourly rate. *Mirch*, 266 Fed. Appx. at 588; (citing *Hensley v.*
20 *Eckerhart*, 461 U.S. 424, 433-34 (1983)). The Court may also consider a departure from
21 the lodestar by analyzing the factors enumerated in *Kerr v. Screen Extras Guild, Inc.*, 526
22 F.2d 67, 69-70 (9th Cir. 1975). *See Chalmers v. City of Los Angeles*, 796 F.2d 1205,
23 1212 (9th Cir. 1986). "The party seeking an award of fees should submit evidence
24 supporting the hours worked and rates claimed." *Hensley*, 461 U.S. at 433.

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⁹ All references to docket entries include all filings within the entry.

In support of the requested fees, the Bank filed a declaration of its counsel Lawrence Hilton, stating he had spent at least 33.1 hours on this case due to Lopez's sanctionable conduct at a discounted rate of \$375 per hour. (Doc. no. 334-11 at 2.) He also declared his co-counsel Robert Hunt spent at least 38.2 hours due to Lopez's sanctionable conduct at a discounted rate of \$300 per hour. (*Id.* at 2-3; *see also* doc. no. 336-5 at 4.¹⁰) This evidence is insufficient to perform the lodestar analysis. Accordingly, the Court reserves the issue of reasonableness of the requested fees for consideration based on further briefing.

III. CONCLUSION

For the foregoing reasons, the Bank's motion for sanctions is granted insofar as the Court finds that the Bank has met its burden to show that sanctions against Lopez are appropriate pursuant to 28 U.S.C. § 1927. The Court reserves the issue of reasonable attorneys' fees for decision based upon further briefing and submission of evidence. No later than April 2, 2021, the Bank shall file a brief together with declarations and evidence in support of the requested attorneys' fees. No later than April 9, 2021, Lopez shall file his opposition, if any. No later than April 16, 2021, the Bank shall file a reply, if any. Upon filing of the foregoing, the parties shall await further order of the Court.

IT IS SO ORDERED.

Dated: March 26, 2021


Hon. M. James Lorenz
United States District Judge

¹⁰ Lopez objects to Hunt's declaration filed at doc. no. 336-5 (Ex. A to Decl. of Lisa Hyska). (Doc. no. 337 at 2.) The objection is overruled, because the same evidence of the Bank's attorneys' fees was filed with the Bank's motion. (*Cf.* doc. no. 334-11 at 2-3.)